

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 MICHAEL MENDIOLA,
12 Petitioner,
13 vs.
14 W.J. SULLIVAN, WARDEN,
15 Respondent.
16

CASE NO. 07-CV-0130 W (JMA)
ORDER ADOPTING REPORT
AND RECOMMENDATION
(Doc. Nos. 18,19.)

17 On January 19, 2007 Petitioner Michael Mendiola ("Petitioner"), a state prisoner
18 proceeding *pro se*, filed a habeas corpus petition seeking relief under 28 U.S.C. § 2254.
19 The original habeas petition argued 5 grounds for relief. (Doc. No. 1.) On April 26,
20 2007 Petitioner filed a First Amended Complaint ("FAC"), which only argued a single
21 ground for relief. (Doc. No. 10.) On May 8, 2007 Magistrate Judge Jan Adler issued
22 a briefing schedule establishing a June 18, 2007 deadline for Respondent to file a motion
23 to dismiss. (Doc. No. 14.) On June 20, 2007 Respondent successfully moved to extend
24 the deadline to July 18, 2007. (Doc. No. 17.) On July 5, 2007 Respondent finally filed
25 their motion to dismiss, roughly ten weeks after the Petitioner filed their FAC.

26 On September 24, 2007 Magistrate Judge Adler issued his Report and
27 Recommendation ("Report") recommending that Respondent's motion to dismiss be
28 denied. (Doc. No. 19.) The Report also ordered that any objections were to be filed by

1 October 12, 2007, and any reply filed by October 26, 2007. To date, no objections have
2 been filed, nor has there been a request for additional time in which to file an objection.

3 A district court's duties concerning a magistrate judge's report and
4 recommendation and a respondent's objections thereto are set forth in Rule 72(b) of the
5 Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). When no objections are
6 filed, the district court is not required to review the magistrate judge's report and
7 recommendation. See United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir.
8 2003) (holding that 28 U.S.C. 636(b)(1)(c) "makes it clear that the district judge must
9 review the magistrate judge's findings and recommendations de novo *if objection is made*,
10 but not otherwise") (emphasis in original); Schmidt v. Johnstone, 263 F. Supp. 2d 1219,
11 1226 (D. Arizona 2003) (concluding that where no objections were filed, the District
12 Court had no obligation to review the magistrate judge's Report). This rule of law is
13 well established within the Ninth Circuit and this district. See Wang v. Masaitis, 416
14 F.3d 992, 1000 n. 13 (9th Cir. 2005) ("Of course, de novo review of a R & R is *only*
15 required when an objection is made to the R & R.") (emphasis added) (citing Renya-
16 Tapia, 328 F.3d 1121); Nelson v. Giurbino, 395 F. Supp. 2d 946, 949 (S.D. Cal. 2005)
17 (Lorenz, J.) (adopted Report without review because neither party filed objections to the
18 Report despite the opportunity to do so, "accordingly, the Court will adopt the Report
19 and Recommendation in its entirety."); see also Nichols v. Logan, 355 F. Supp. 2d 1155,
20 1157 (S.D. Cal. 2004) (Benitez, J.).

21 ///

22 ///

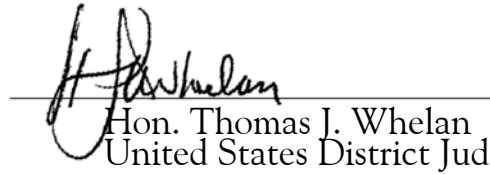
23 ///

24
25
26
27
28 The Court therefore accepts Judge Adler's recommendation, and **ADOPTS** the

1 Report in its entirety. For the reasons stated in the Report, which is incorporated herein
2 by reference, the Court **DENIES** Respondent's motion to dismiss [Doc. No. 18].¹

3
4
5 **IT IS SO ORDERED.**

6
7 DATED: November 29, 2007

8
9 
10 Hon. Thomas J. Whelan
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27
28

¹Further, the Court suggests that Respondent take better care to recognize this habeas petition's operative pleading, especially in light of the Court's previous willingness to grant filing extensions.